

REMARKS

This Amendment is submitted in response to the Final Office Action mailed on September 16, 2004. Claims 1-12, 14-20, and 28-49 are pending in the application. Claims 13-14, 21-27 and 36 have been canceled with out prejudice. Claims 1, 4-6, 10, 34, and 35 stand rejected under 35 U.S.C. § 102(b). Claims 2, 3, 7-9, 11-12, 15-20, 28-33 and 37-49 stand rejected under 35 USC § 103(a).

Claims 1, 12, 28 and 34 have been amended to clarify that both the coating and gum center of the coated gum centers include a metal salt. Support for the amendments can be found on page 3, line 29 and in Examples 14-17. Claim 35 has been amended to depend from independent Claim 34.

Claims 20, 38 and 39 stand rejected under 35 U.S.C. § 112 as being dependent on a canceled claim. Claims 20 and 38 have been amended to correct the dependencies.

The Office action rejected Claims 1, 4-6 and 10 as anticipated by *D'Amelia*. (col. 1-3 and 5). Of the rejected claims, only Claim 1 is independent. With respect to Claim 1, *D'Amelia* does not disclose coated gum centers, nor gum coatings. In view of this, it is clear that *D'Amelia* also fails to disclose gum coatings that include a metal salt. Thus, Applicant submits that *D'Amelia* cannot anticipate the claimed composition which requires a gum coating, a coated gum center and a metal salt in the gum coating, because a reference must disclose each and every claim limitation in order to anticipate a claim. Moreover, because *D'Amelia* lacks a coating for its gum base, it provides no motivation for including a metal salt in a coating and cannot make obvious the claimed invention, which includes a metal in its coating. Thus, Applicants respectfully submit that Claim 1 is novel and is not obvious over *D'Amelia*. Claims 4-6 and 10, which also depend on Claim 1, and therefore contain all of its limitations, are not anticipated for the same reasons. Applicants respectfully request that the basis for the rejection be thoroughly reconsidered and that the rejection be withdrawn.

Claims 34 and 35 stand rejected as anticipated by *Hill et al.* (cols. 10, 12, 13, 15-17 and 20). Of those claims only Claim 34 is independent. With respect to Claim 34, *Hill* fails to disclose a coated gum center wherein the center and the coating are prepared with a metal salt ingredient. Thus, the *Hill* gums would not contain a metal salt relatively evenly dispersed in the

gum center and relatively evenly dispersed in the gum coating, as in the claimed invention. *Hill* teaches including active ingredients in its gum coatings. Furthermore, *Hill* provides no motivation for including an active ingredient in the gum center because the *Hill* coatings release their active ingredients into the oral cavity at an effective predetermined rate and at a predetermined amount. In fact, according to *Hill*, it is known in the art that the release of active ingredients from the gum base is incomplete and slow and constitutes a problem to be solved. Col 8, lines 63-65. Moreover, in *Hill* there is no problem to be solved by including active ingredients in the gum center. Including an active ingredient in the gum center would likely interfere with the predetermined rate of release of active ingredients from the *Hill* gums thereby defeating one of objectives of the invention. Col. 9, lines 47-49; col. 10, lines 8-10. It simply cannot be said that *Hill* provides any motivation for including an active ingredient in a gum center. Thus, Applicants respectfully submit that *Hill* fails to anticipate or render obvious Claim 34 or its dependent Claim 35.

Claims 2, 3, 7-9, 11, 12, 15-20, 28-33 and 37-39 stand rejected under 35 U.S.C. § 103(a) as being obvious over *D'Amelia* in view of *Hill*. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. Hindsight reconstruction cannot be used to pick and choose among isolated disclosures in the prior art to re-create the claimed invention.

Applicants respectfully submit that *prima facie* case of obviousness is not established by the contention in the Office action that "it would have been obvious to include each of the applicant's claimed coating components in the coating of *D'Amelia* et al in order to obtain the added benefits of plaque disruption and gingivitis control since it is well known to coat chewing gum with such components to obtain these benefits, as evidenced by *Hill*." With all due respect, Applicants submit that *D'Amelia* does not disclose a gum coating and *Hill's* active ingredients

are only included in the *Hill* gum coatings. Moreover, there is no problem attendant in *D'Amelia* that could be solved or improved upon by adding a gum coating as in *Hill*, or by including an active ingredient in such a coating as in *Hill*. *D'Amelia* provides no explicit suggestion for such a combination, nor does *Hill*. Thus, Applicants respectfully submit that their invention which includes, among other things, a coated gum center in which the coating and the center include a metal salt designed to provide breath freshening characteristics, as in independent Claim 1 is not obvious. Similarly, Applicants submit that independent Claims 12, 28, and 34 which also require a metal salt in both the coating and the gum center are allowable for the same reasons. Likewise their dependent Claims 2, 3, 7-9, 11, 15-20, 29-33 and 37-39, which contain all of the limitations of their base Claims are allowable for the same reasons.

Claims 40-49 stand rejected under 35 U.S.C. § 103(a) as being obvious over *Hill* in view of *D'Amelia*. Of the rejected claims, only Claim 40 is independent. With respect to Claim 40, *Hill* lacks a gum coating containing a copper salt. As indicated previously, *D'Amelia* completely lacks a gum coating. Applicants respectfully submit that *D'Amelia* has no teaching with respect to gum coatings and cannot properly be used to supplement the deficiencies of *Hill* so as to sustain the present rejection for obviousness. To establish a *prima facie* case of obviousness the prior art references must teach or suggest all the claim limitations. Thus, even if it were proper to combine the references, which Applicants dispute, the references would not lend themselves to a combination which would give the present invention requiring a gum coating including copper. Moreover, as indicated above there is no teaching in the references, and the Office action has not provided any rationale in support of, any combination between *Hill* and *D'Amelia*, much less a combination that would provide the present invention. In addition to the reasons set forth above, *Hill* teaches that it is known in the art that the release of active ingredients from the gum base is a major problem. See *Hill*, col. 8, lines 63-65. Certainly neither *Hill*, nor the art in general, supports its combination with *D'Amelia* and *D'Amelia* provides no indication that anything would be gained by adding any sort of a coating to its gum. Applicants submit that gums containing coatings containing copper metals are not obvious over *Hill* in view of *D'Amelia* and respectfully request the Examiner to reconsider and withdraw the rejection with respect to Claim 40 and its independent Claims 41-49.

For the foregoing reasons, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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